



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	<u>2 VAC 5-60</u>
<b>Regulation title</b>	Rules and Regulations Governing the Operation of Livestock Markets
<b>Action title</b>	Proposal to revise 2VAC-5-60, providing updated language with respect to disease eradication efforts and animal disease traceability
<b>Date this document prepared</b>	December 3, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The regulation was adopted November 27, 1985, and contains outdated language, particularly with respect to brucellosis eradication efforts and animal disease traceability. The regulation serves a very important purpose in prescribing the rules governing the operation of livestock markets. Because of the number of animals congregated at livestock markets and buying stations in the state, there is a substantial risk of disease transmission.

Changes are needed to this regulation for two reasons. First, due to language describing the tests and procedures employed for Brucellosis testing in 1985, the regulation is no longer valid. The regulation requires that all cows two years of age or older that are sold at a market be tested for brucellosis; this "first-point testing" was stopped in Virginia ten years ago by direction from the State Veterinarian. However, unfortunately the associated identification of these cows also stopped. Thus, the second reason for changing this regulation is to provide a means for ensuring that Virginia cattle are traceable in the event of a disease outbreak; this also has advantages in domestic and international marketing of these traceable cattle, addresses demands from other countries where animal disease traceability is routine, and will be necessary to ensure that Virginia is compliant with USDA requirements for animal disease traceability.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

This regulation is promulgated pursuant to Code of Virginia as detailed below (parts of each section provided in quotes):

- §3.2-6001 – **Protection of livestock and poultry** - “The Commissioner, the Board, the State Veterinarian and all other veterinarians within the Commonwealth shall use their best efforts to protect livestock and poultry from contagious and infectious disease.”
- §3.2-6002 – **Contagious and infectious diseases; prevention and eradication** - “The State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases. The Board may adopt regulations as may be necessary to effectuate the purposes of this article. The Board and Commissioner are also authorized to make the regulations adopted under this article conform, insofar as practicable, to those regulations adopted under federal statutes governing animal health.”
- §3.2-6012 – **Duty of operators of stockyards and poultry slaughter facilities** - “Any person who operates a stockyard, poultry slaughter facility, or any other premises where livestock or poultry are repeatedly assembled: (i) shall maintain such premises in a sanitary condition as directed by the State Veterinarian; (ii) shall obey all orders or regulations adopted pursuant to this chapter as to handling livestock or poultry that may be affected with contagious or infectious disease, or that have been exposed to contagious and infectious disease; and (iii) shall clean and disinfect such premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative.”
- §3.2-6016 – **Altering disease control identification of livestock or poultry** – “It shall be unlawful for any person to, unless in accordance with regulations adopted pursuant to this article, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county, the Commissioner, the Board, the U.S. Department of Agriculture, or any other state for the identification of any animal in the Commonwealth for the purpose of controlling or eradicating disease.”

As stated in §3.2-6002, “the Board may adopt regulations as may be necessary to effectuate the purposes of this article.” The authority under state law is both mandatory and discretionary.

Under federal law, the authority to implement some of the requirements of this regulation is expected to be mandatory. The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) is planning on adding a new section to title 9 of the *Code of Federal Regulations* (9 CFR) which would require that livestock moving interstate be officially identified and accompanied by an interstate certificate of veterinary inspection (ICVI) or other documentation, with some exemptions. This proposed rule is planned to be published in April, 2011, with an effective date to follow.

## Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action is essential to protect the health, safety, and welfare of citizens for the same reason that the following statement may be found in the *Code of Virginia*: "The State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases (§3.2-6002). That is, for the express purpose of protecting the health of livestock in poultry. This is necessary for three reasons: (1) to directly enhance the health of the animals; (2) to promote the financial interests of the livestock producers (disease can cause significant losses to the producer, through death loss, decreased production, and reduction of market options); and (3) to enhance human health in cases of zoonotic (shared human and animal pathogens) disease transmission.

In addition to the above stated need and benefit to the health, safety, and welfare of citizens, this regulation is also needed to comply with the expected federal rule requiring that livestock be identified and be able to be traced in the event of a disease event.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The existing regulation will be changed to remove the specific language requiring the brucellosis testing of all cows offered for sale at the livestock markets. The requirement for permanent identification that was associated with that testing will need to remain in the regulation.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

An alternative to the proposed regulatory action would be to request that all livestock market operators voluntarily officially and permanently identify cattle offered for sale in their markets. However, it is fully realized that there is a time and financial cost to applying permanent identification, and as long as some markets do not provide this service, there is the potential for an inequitable situation. In order to fulfill the statutory mandate that the "State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases" (§3.2-6002), it is necessary to have effective animal disease traceability.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email, or fax to Dr. Charles C. Broaddus, 102 Governor Street, Richmond, VA 23219; phone: (804) 786-2483; fax: (804) 371-2380; e-mail: [charles.broaddus@vdacs.virginia.gov](mailto:charles.broaddus@vdacs.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

A public hearing will be held during the proposed stage and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the General Notices section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The agency is using the participatory approach in the development of the proposal. VDACS intends to assemble an advisory group to aid in the drafting of the proposed regulations.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action will have no impact on the institution of the family or family stability.